

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA

BUTTE DIVISION

FILED

JUL 11 2016

Clerk, U.S. District Court
District Of Montana
Helena

UNITED STATES OF AMERICA,

Plaintiff,

No. CV 15-72-BU-SEH

vs.

ORDER

(1) JAMES TARPEY;
(2) PROJECT PHILANTHROPY,
INC. d/b/a DONATE FOR A CAUSE;
(3) TIMESHARE CLOSINGS, INC.
d/b/a RESORT CLOSINGS, INC.;
(4) RON BROYLES;
(5) CURT THOR; and
(6) SUZANNE CROWSON f/k/a
SUZANNE TARPEY;

Defendants.

Defendants James Tarpey, Timeshare Closings, Inc. d/b/a Resort Closings, Inc., and Project Philanthropy, Inc. have moved to dismiss Defendant Roy Broyles' crossclaim.¹

The crossclaim as pleaded is inadequate to satisfy the pleading requirements

¹ See Docs. 65 and 67.

of *Bell Atlantic Corporation v. Twombly*² and *Ashcroft v. Iqbal*³ and later Ninth Circuit decisions. In *Moss v. U.S. Secret Service*, the Ninth Circuit noted that “[p]rior to *Twombly*, a complaint would not be found deficient if it alleged a set of facts consistent with a claim entitling the plaintiff to relief.”⁴ However, post-*Twombly*, complaints only alleging “labels and conclusions,” “formulaic recitation[s]” or “naked assertion[s]” are inadequate pleadings and will not survive a Fed. R. Civ. P. 12(b)(6) motion to dismiss.⁵ Instead, “[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”⁶ “Dismissal is proper when the complaint does not make out a cognizable legal theory or does not allege sufficient facts to support a cognizable legal theory.”⁷

ORDERED:

Defendants’ James Tarpey and Timeshare Closings, Inc. d/b/a Resort

² 550 U.S. 544 (2007).

³ 556 U.S. 662 (2009).

⁴ *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 972 (9th Cir. 2009) (citation omitted).

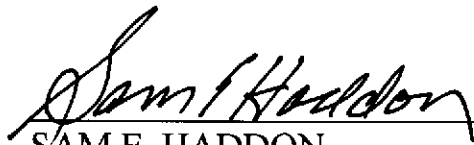
⁵ *Twombly*, 550 U.S. at 555, 557.

⁶ *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570); see *Cousins v. Lockyer*, 568 F.3d 1063, 1067-68 (9th Cir. 2009) (finding the same).

⁷ *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (citation omitted).

Closings, Inc. Motion to Dismiss Defendant Ron Broyles' Crossclaim⁸ and Defendant Project Philanthropy, Inc.'s Motion to Dismiss Defendant Ron Broyles' Crossclaim⁹ are GRANTED, subject to leave to and including July 22, 2016, in which to file an amended crossclaim meeting the pleadings requirements of *Twombly* and *Iqbal*, and current Ninth Circuit precedent.

DATED this 11th day of July, 2016.



SAM E. HADDON
United States District Court

⁸ Doc. 65.

⁹ Doc. 67.